IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5366 OF 2006

Central Bank of India ..Petitioner.
Vs.
Messrs. Ashoka Constructions ..Respondents.

Mr.A.Y.Sakhare, Sr.Counsel i/b T.N.Tripathy & Co. , adv. for the Petitioner.

Mr.R.S.Apte i/b A.A.Garge, advs. for the Respondents.

WITH
WRIT PETITION NO.3254 OF 2006

M/s. Ashoka Constructions ..Petitioners.
Vs.
Central Bank of India ..Respondent.

Mr.R.S.Apte i/b A.A.Garge, advs. for the Petitioners.

Mr.A.Y.Sakhare Sr.Counsel i/b T.N.Tripathy & Co., advs. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 7, 2007.

P.C.:

1. Heard the learned counsel for the Parties.

2. The Central Bank of India had given a contract to M/s.Ashoka Constructions (Hereinafter referred to as 'Contractor') for construction of building. That construction was completed sometimes in the year of 1995 and some payments were also made. However, there was dispute about the final bill and the balance amount to be paid and the matter was referred to the Sole

Arbitrator. The Sole Arbitrator passed an award on 3rd April, 1999 holding that the total amount of Rs. 30,43,743/- was due from the bank to the contractor. This included the amount of revised final bill, interest thereon from the date when the bill had became due till the matter was referred to the Arbitrator and also the interest on the amount from the date when the matter was referred to the Arbitrator till date of award. The learned Arbitrator directed the bank to make the payment of the said amount within 30 days and also directed that failing to pay the amount within the stipulated period, the amount shall carry interest at the rate of 18% per annum from 4-5-1999 till the date of actual payment. This award was challenged by the bank and in C.M.Application No.241 of 1999, the IIIrd Additional District Judge, Nashik modified the award in respect of the amount deleting the claim on account of rise in price due to the Gulf War. As per the order passed by the IIIrd Additional District Judge, Nashik, the bank was liable to pay Rs.24,41,950/- in stead of the amount awarded by the Arbitrator. In Clause 3 of the order, the learned IIIrd Additional Sessions Judge stated "The award be modified accordingly, to the extent of aforesaid extent only and rest part of it is confirmed". It appears that the contractor moved the IIIrd Additional District Judge, Nashik pointing out some mistake in the calculation of amount and after

hearing the parties, the learned IIIrd Additional Sessions Judge passed the order dated 14-8-2003 and corrected the amount payable as follows:

. The amount payable by the Bank to the contractor, is as under:-

(A)	Net amount payable as per final bill	Rs.13,72,448.00
(B)	Post-interest	Rs. 8,55,505.00
(C)	Pendente lite interest	Rs. 2,43,742.50
	Total Amount	Rs.24,71,695.50

3. Thus, as per this order total amount payable by the bank to the contractor was calculated to be Rs.24,71,695.50 paise. Thereafter, the matter was taken to the IVth Ad-hoc Additional District Judge, Nashik and the impugned order was passed on 17-3-2006. It appears that the bank had made the payment of Rs.24,41,950/- on 25-7-2003. Second payment to the tune of Rs.29,21,629.32 was made on 14-10-2005 and the last payment of Rs.29,745/- was made on 30-01-2006. The contractor made certain calculations, which were not acceptable to the IVth Additional District Judge. Taking into consideration the payments made, the learned IVth Additional District Judge directed that whole of the amount of Rs.24,71,695/- shall carry interest at the rate of 18% per annum from 4-5-1999 to 25-7-2003, the date when the first payment was made and

only on amount of Rs.29,745/-, interest be paid from 26-7-2003 to 14-10-2005. It appears that the learned Judge first adjusted the payment towards the principal amount and directed to calculate interest only on the balance amount.

4. The learned Senior Counsel for the bank contended that only on the principal amount, i.e., final bill amount, future interest could have been awarded and, therefore, calculation of interest on whole of the amount of Rs.24,71,695/- is not correct. On the other hand, the learned counsel for the contractor contended that the award had already became final and, therefore, the Executing Court can not go beyond the said award, which had became the decree and, therefore, whole of the amount has to be considered for the purpose of calculation of future interest. His grievance is that the learned trial Court committed error in appropriating the payment made by the bank, first towards the principal amount and directing to pay only the balance amount of interest. According to him, as per law the contractor has liberty to appropriate the amount first towards the interest and as long as principal amount is not paid, it is liable to future interest.

5. After hearing the learned counsel and after

perusal of the record, I find that the award passed by the Arbitrator with two modifications made by the IIIrd Additional District Judge had already became final and, therefore, the terms of award can not be the subject matter of the present writ petition. The Arbitrator had clearly included the interest on principal amount being the final bill, interest on the same from the date when the amount had became due till the matter was referred to the Arbitrator and the interest from the date when the matter was referred to the Arbitrator till its decision in the award amount. Whole of that amount had became principal amount for the purpose of future interest. It is settled that interest on the principal amount, which has accrued before filing of the suit becomes a part of the interest for future interest . However, normally interest on such principal amount from the date of suit till the date of decree is not merged in the principal amount for the future interest. If the award would have been challenged, possibly it could be rectified but as the award has become final subject to two modifications, now no correction can be made and it must be held that even amount of interest on the principal amount from the date of reference of the matter to the Arbitrator till the date of award has become a part of the principal amount for the purpose of calculation of the future interest. Therefore, future interest will have

to be calculated from 4-5-1999 on the total amount of Rs.24,71,695/-. In view of this, I find no substance in the objection taken on behalf of the bank.

6. The learned counsel for the Contractor has rightly contended that the creditor is entitled to appropriate the amount of payment first towards the interest of cost and then to the principal amount and he is supported by **M/s. Industrial Credit and Development Syndicate v. Smt. Smitaben H. Patel and others AIR 1999 Supreme Court 1036**. Therefore, whatever payments are made, they are liable to be first adjusted towards the interest amount and then towards the principal amount.

7. In view of this, the following order will meet the ends of justice:

8. Interest at the rate of 18% per annum shall be calculated on the amount of Rs.24,71,695/- from 4-5-1999 till 25-7-2003 as stated in the impugned order. The payment made by the bank on 25-7-2003 of Rs.24,41,950/- shall be reduced from the total of aforesaid principal amount and the interest thereon upto that date and the balance amount, within the limit on principal amount, shall continue to carry interest at the rate of 18% per annum till 14-10-2005 when the

second payment of Rs.29,21,629.32 was made and if still there was some amount due, it will continue to carry interest at the rate of 18% per annum till the amount is fully satisfied. In case, the bank has made excess amount, the same shall be refunded. In case, the amount deposited by the bank with the Court is invested, the same shall be paid to the contractor with interest. With aforesaid directions, both the petitions stand disposed off.

9. At this stage, the learned senior counsel makes a request to stay payment to the contractor for four weeks. I see no justification for such request. Request stands rejected.

[J.H.BHATIA, J.]